



WISCONSIN LEGISLATIVE COUNCIL AMENDMENT MEMO

2003 Senate Bill 3	Assembly Substitute Amendment 1
<i>Memo published: March 17, 2004</i> <i>Contact: Joyce L. Kiel, Senior Staff Attorney (266-3137)</i>	

CURRENT LAW

A human service vehicle (HSV) is a motor vehicle (other than a school bus) used to transport elderly or disabled persons in connection with a transportation assistance program, such as s. 85.21, Stats., which provides state funding to assist counties in providing transportation services for elderly and disabled persons. An HSV does not include a motor vehicle operated: by an uncompensated volunteer (even if the volunteer receives an allowance to defray vehicle operating costs); in an urban mass transit system; as a taxicab service; or as a common carrier. Some counties operate a specialized transportation service (STS) to provide such transportation assistance, and some counties contract with an STS to provide such transportation assistance.

Current statutes require that an HSV have a minimum of \$10,000 property damage liability coverage and \$75,000 per person bodily injury liability coverage. Current statutes require an annual inspection of the equipment and condition of HSVs. Provisions relating to the operation, equipment standards, and inspection of HSVs are set forth in ch. Trans 301, Wis. Adm. Code.

However, neither current statutes nor current rules establish minimum qualifications for an HSV operator, for example, there is no requirement for a special operator's license or endorsement.

2003 SENATE BILL 3, AS AMENDED BY ASSEMBLY SUBSTITUTE AMENDMENT 1

2003 Senate Bill 3, as amended by Assembly Substitute Amendment 1 to the bill (hereinafter, referred to as the amended bill), provides that the Department of Transportation (DOT) must refuse to register an HSV that has not been inspected or that has failed its inspection. In addition, the amended bill includes: (1) provisions regarding the minimum qualifications for an HSV operator, which, in general, relate to the person's criminal conviction record and training on passenger restraint systems; and (2) provisions requiring an STS to check criminal conviction and operating records and ensure training on passenger restraint systems.

1. Provisions Relating to STS

The amended bill includes the following provisions relating to an STS that is operated by a county under s. 85.21, Stats., or that contracts with a county for transportation services under s. 85.21, Stats.:

a. Background Check Requirements

The amended bill generally requires that an HSV operator's background be checked with respect to the DOT operating record and criminal convictions before employment and, for the DOT operating record, every four years thereafter. An exception to the requirement for these checks applies if the HSV operator holds an "S" endorsement issued or renewed by DOT within the previous four years. (An "S" endorsement is required to operate a school bus; "S" endorsements are discussed in item (4), below.) However, these provisions vary depending on whether the person: (1) would be hired on or after the effective date of the amended bill (that is, the first day of the fourth month beginning after publication); or (2) is already employed by the STS on the effective date (existing employee). Both are discussed below.

(1) New Employees

Unless a person seeking employment as an HSV operator on or after the effective date holds a valid "S" endorsement that was issued or renewed within four years prior to employment, an STS must do both of the following before employing the person as an HSV operator:

(a) Conduct a ***criminal history search*** by obtaining records maintained by the Department of Justice (DOJ). If the person is not a resident of Wisconsin or if at any time within the three years preceding the date of the DOJ search the person has not been a resident of Wisconsin, the STS must make a good faith effort to promptly obtain criminal history records from the state in which the person resides or resided. (The prohibition on employing a person as an HSV operator because of his or her conviction record is discussed in item b., below.)

(b) Obtain the DOT ***operating*** record. If the operating record has already been obtained by another entity, the STS may obtain the operating record from that entity if there are reasonable grounds to believe that the operating record is accurate and was furnished by DOT to that entity not more than two months previously.

(2) Existing Employees

For a person who is employed as an HSV operator on the effective date of the amended bill, the amended bill does not require the pre-employment background checks discussed in item (1), above.

(3) Periodic Operating Record Rechecks

At least every four years, an STS must obtain an updated DOT operating record for each of its HSV operators (or, as indicated in item (1) (b), above, may obtain it through another entity). There is no requirement to periodically conduct a criminal history search.

(4) Exception for Those Holding an “S” Endorsement Issued by DOT

The amended bill specifies that the requirement to obtain the DOT operating record and conduct the criminal history search discussed above before employing a person as an HSV operator does *not* apply if the person holds an “S” endorsement issued or renewed by DOT within the previous four years.

To operate a school bus in Wisconsin, a Wisconsin resident must have an “S” endorsement to his or her operator’s license or commercial driver’s license (CDL) issued by DOT. With certain limited exceptions, a Wisconsin operator’s license or CDL is issued for eight years. An “S” endorsement is issued only after testing of knowledge and skills and only if certain medical and nonmedical requirements are met, as described in s. 343.12, Stats., and ch. Trans 112, Wis. Adm. Code. Before issuing or renewing an “S” endorsement, DOT conducts a criminal history search. The statutes and administrative code specify the disqualifying crimes and time periods of disqualification for an “S” endorsement, as set forth in the *Attachment* and discussed in item b. (1), below.

b. Prohibition on Employing

The amended bill provides that, notwithstanding the statutes relating to employment discrimination, an STS may not employ as an HSV operator any person to whom any of the following applies:

- (1) *Convictions.* The STS knows or should have known that the person does not meet the requirements for an “S” endorsement with respect to criminal background under statutes and DOT rules. The crimes and periods of disqualification under current law are shown in the *Attachment*.

If an applicant holds a valid “S” endorsement issued or renewed within four years prior to employment, the STS may employ the person. For other individuals, as noted above, the STS must determine whether the person would meet the same requirements about criminal background that apply to those holding an “S” endorsement.

- (2) *No Operator’s License.* The STS knows or should have known that the person does not possess a valid operator’s license that would permit operation of an HSV.
- (3) *No Operating Record Obtained.* If required to do so, the STS has not obtained the person’s DOT operating record before employment and every four years thereafter.
- (4) *Passenger Restraint Training.* The person has not been fully trained, within the previous 24 months, in the proper use of all passenger restraint systems available in the HSV operated by that person.

2. Provisions Relating to HSV Operators

In addition to provisions applicable to STSs, the amended bill includes parallel provisions relating to HSV operators and penalties applicable to HSV operators for failure to comply with these provisions. The requirements and penalties applicable to HSV operators who are transporting passengers are as follows:

- a. Prohibition against operating an HSV without a valid operator's license. (Penalty: In addition to any penalties applicable to operating without a license--forfeiture of not more than \$20 for the first offense and not more than \$50 for each subsequent offense.)
- b. Requirement to hold a valid "S" endorsement or meet the requirements for an "S" endorsement with respect to criminal background, that is, not having any of the convictions in the *Attachment* within the specified time periods. (Penalty: Forfeiture of not more than \$20 for the first offense and not more than \$50 for each subsequent offense.)
- c. Requirement to be fully trained, within the two previous years, in the proper use of all passenger restraint systems available in the HSV. (Penalty: Forfeiture of not more than \$20 for the first offense and not more than \$50 for each subsequent offense.)

These provisions apply to HSV operators on the amended bill's effective date, that is, the first day of the fourth month beginning after publication.

LEGISLATIVE HISTORY

2003 Senate Bill 3 was introduced by Senator Lazich and others; cosponsored by Representative Gundrum and others. Senate Amendment 1 to the bill was offered by the Senate Committee on Transportation and Information Infrastructure which then recommended adoption of the amendment on a vote of Ayes, 5; Noes, 0. The committee recommended the bill, as amended, for passage on a vote of Ayes, 4; Noes, 1. The Senate adopted Senate Amendment 1 and passed the bill, as amended, on a voice vote.

Assembly Substitute Amendment 1 to the bill was offered by Representative Friske. The substitute amendment was adopted by the Assembly on a voice vote. The Assembly concurred in the bill, as amended, on a vote of Ayes, 77; Noes, 17.

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Attachment

ATTACHMENT

**Current Law Regarding Criminal Background Disqualification
of Wisconsin Residents for “S” Endorsement to Operate a School Bus**

Disqualifying Crimes and Time Periods of Disqualification-Non- Driving-Related Offenses	<p>Subject to the employment discrimination laws (that is, if the circumstances of the crime substantially relate to operating a school bus) within the <i>past five years</i>, has not been convicted of a “felony or offense against public morals” in Wisconsin, or by an American Indian tribe in Wisconsin, or in “another jurisdiction.”¹ [s. 343.12 (2) (e), Stats.] DOT has promulgated s. Trans 112.15, Wis. Adm. Code, which defines this as the following crimes:</p> <ul style="list-style-type: none">a. Felonies, under ch. 940 (crimes against life or bodily security).b. Fourth-degree sexual assault under s. 940.225 (3m).c. Obstructing a highway, tampering with traffic signals, and related intentional acts creating unreasonable risks and high probability of causing death or great bodily harm under s. 941.03, 1985 Stats.²d. Endangering safety by use of dangerous weapon under s. 941.20.e. Recklessly endangering safety under s. 941.30.f. Possession of explosives for unlawful purposes under s. 941.31.g. Administering a dangerous or stupefying drug under s. 941.32.h. Placing foreign objects in edibles under s. 941.325.i. Criminal damage to property under s. 943.01.j. Arson under ss. 943.02 to 943.05.k. Possessing, manufacturing, selling, or transferring Molotov cocktails under s. 943.06.l. Robbery under s. 943.32.m. All crimes under ch. 944 (crimes against sexual morality).n. Violation of ch. 961 (Uniform Controlled Substances Act).o. Any other felony not specified above that has an element of the use or threat of use of force or the causing or the threat of causing injury to the life or bodily security of another person.p. An attempt or being a party to any offense specified above.
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¹ “Another jurisdiction” is defined as another state, District of Columbia, Puerto Rico, any U.S. territory or possession of the United States, any federal military installation in Wisconsin, and any province in Canada. [s. 340.01 (41m), Stats.]

² Because of the five-year provision, this crime is no longer pertinent.

<p>Disqualifying Crimes and Time Periods of Disqualification-Driving-Related Offenses</p>	<p>Notwithstanding the employment discrimination laws, within the <i>two-year period immediately preceding the date of application</i> for the “S” endorsement, has not been convicted of any of the following [s. 343.12 (2) (d), Stats.]:</p> <ol style="list-style-type: none"> 1. Conviction, suspension, or revocation that would be counted under s. 343.307 (2), that is: <ol style="list-style-type: none"> a. s. 346.63 (1) (operating while intoxicated (OWI)).³ b. s. 346.63 (2) (OWI--causing injury). c. s. 346.63 (5) (OWI--commercial motor vehicle (CMV)).³ d. s. 346.63 (6) (OWI (.04 to .1) and causing injury with CMV). e. Conviction in another jurisdiction of law in substantial uniformity with 49 C.F.R. s. 383.51 (b) (2) (i) or (ii) (disqualification of drivers who hold a commercial driver’s license (CDL)).⁴ f. Conviction in another jurisdiction of OWI or conviction, suspension, or revocation in another jurisdiction for refusal for testing for OWI. g. s. 343.305 (10) (revocation for refusal for testing for OWI). h. s. 940.09 (1) (OWI--homicide).⁵ i. s. 940.25 (OWI--causing great bodily harm).⁵ 2. Conviction for offense listed in s. 343.31 (1) or (2), that is: <ol style="list-style-type: none"> a. s. 346.62 (4) (causing great bodily harm by negligent driving).³ b. s. 940.06 (second-degree reckless homicide) if vehicle involved.³ c. s. 940.09 (homicide by intoxicated use of vehicle).^{3, 5} d. s. 940.10 (homicide by negligent operation of vehicle).³ e. s. 940.25 (injury by intoxicated use of vehicle).^{3, 5} f. s. 346.63 (2) (OWI--causing injury).³ g. s. 346.63 (6) (OWI--(.04 to .1) and causing injury with CMV).³ h. Conviction for OWI.³ i. Any felony in which a motor vehicle is used.³
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³ Including convictions in Wisconsin under a local ordinance or by a Wisconsin Indian tribe.

⁴ 45 C.F.R. s. 383.51 relates to disqualification of drivers who have a CDL. However, s. 383.51 (b) (2) (i) or (ii) do not exist.

⁵ Sections 940.09 (1) and 940.25, Stats., are also included as felonies under ch. 940 and are also subject to the five-year provision listed above.

	<p>j. Failure to stop to render aid in a motor vehicle accident if required by state law.³</p> <p>k. Operating a motor vehicle without proof of financial responsibility, if proof required.³</p> <p>l. s. 343.44 (1) (a), (b), or (d) (operating vehicle while suspended, revoked, or disqualified) if three or more such violations within the five years preceding the violation.³</p> <p>m. s. 346.04 (3) (knowingly fleeing or attempting to elude traffic officer).³</p> <p>n. Any offense under this item 2. committed in another jurisdiction.</p>
	3. Conviction under s. 343.44 (1) (operating while license revoked or suspended). ³
	4. Conviction under s. 346.62 (reckless driving). ³
	5. Two or more convictions under s. 346.63 (7) (operating CMV after drinking or while possessing intoxicant). ³
	6. Conviction for reckless or careless driving in another jurisdiction.

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